

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Ecological Alliance, LLC and Koch Industries, Inc.**

This Settlement Agreement is entered into by and between Ecological Alliance, LLC (“Ecological”), on the one hand, and Koch Industries, Inc. (“Koch”), on the other hand, with Ecological and Koch collectively referred to as the “Parties.”

1.2. **General Allegations**

Ecological alleges that Koch manufactured and distributed and offered for sale in the State of California clotheslines containing Di(2-ethylhexyl)phthalate (“DEHP”), and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). California has identified and listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The products that are covered by this Settlement Agreement are defined as clotheslines that Koch has sold, offered for sale or distributed for or in California, including but not limited to such products that Koch has sold, offered for sale or distributed for or in California as private label products that carry other entities’ names and/or branding (collectively, the “Products”).

1.4. **Notice of Violation**

On June 8, 2021, Ecological served Koch, Tractor Supply Company, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Koch and such public enforcers with notice that Koch was allegedly in violation of

California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Koch's compliance with Proposition 65. Koch denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Koch of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Koch of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Koch on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Koch under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 6, 2021.

2. INJUNCTIVE RELIEF: WARNING

2.1. Warning

As of the Effective Date, Koch shall manufacture, import, or otherwise source for sale in California only Reformulated Products, as defined pursuant to Section 2.2 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.3

below. Within 60 days, Koch will provide notice to all distributors, retailers, wholesalers, vendors, licensors, licensees, retailers, franchisees, dealers, or private brands known to sell the Products for or into California as to the need to provide on-product and other warnings, such as internet warnings, needed to comply with Proposition 65, and dually provide warning materials for on-product warnings upon request.

2.2. Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP, butyl benzyl phthalate (BBP), di-n-butyl phthalate (DBP), di-isodecyl phthalate (DIDP), diisononyl phthalate (DINP), and di-n-hexyl phthalate (DnHP) in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.3. Warning Language

Where required, Koch shall provide Proposition 65 warnings as follows:

(a) Koch may use any of the following warning statements in full compliance with this Section:

- (1) **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (“DEHP”), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.
- (2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) If Koch uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

(c) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations, and Koch shall comply with all warning requirements under Proposition 65.

(d) If Proposition 65 warnings for DEHP should no longer be required, Koch shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Koch shall be entitled to use, at their discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(B)

In settlement of all the claims referred to in this Settlement Agreement, Koch shall pay a total of \$1,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Ecological. Ecological’s counsel

shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Koch shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Koch's attention. Koch shall pay Ecological's counsel \$13,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By August 23, 2021, Koch shall make a total payment of Fourteen Thousand Dollars (\$14,000) for the civil penalties and attorney's fees / costs by either:

a) wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325132729125

Beneficiary: Custodio & Dubey LLP

b) or check written to "Custodio & Dubey LLP, client trust account" and delivered the Notice address for Ecological, specified in Section 8, below.

Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1. Release of Koch, Downstream Distributors and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, on behalf of itself, its past

and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Koch, (b) each of Koch's downstream distributors (including but not limited to Tractor Supply Company), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Koch's parent companies, corporate affiliates, subsidiaries, successors, acquirers, and/or assignees, as well as their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister, parent, and successor entities (collectively "Releasees").

Ecological also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Koch and the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Ecological, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6.2. Koch's Release of Ecological

Koch waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

7. DEEMED COMPLIANCE WITH PROPOSITION 65

Compliance by Koch with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to the chemicals identified in Section 2.2 from use of the Products.

8. PUBLIC BENEFIT

It is the Parties' understanding that the commitments it has agreed to herein, and actions to be taken by Koch under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Koch's failure to provide a warning concerning exposure the chemicals identified in Section 2.2 from use of the Products Koch has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute,

sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Koch is in material compliance with this Settlement Agreement.

9. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Koch shall have no further obligations pursuant to this Settlement Agreement.

10. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Koch: Derek Goodman
 General Counsel
 Koch Companies
 4200 Dahlberg Drive
 Golden Valley, MN 55422

with a copy to:
 Bao M. Vu
 Stoel Rives LLP
 Three Embarcadero Center, Suite 1120
 San Francisco, CA 94111

For Ecological: Vineet Dubey, Esq.
 Custodio & Dubey LLP
 445 S. Figueroa St., Suite 2520
 Los Angeles, CA 90071

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

11. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

13. ENTIRE AGREEMENT



This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

14. MODIFICATION

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: August 6, 2021</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: August 6, 2021</p> <p>By:  On Behalf of Koch Industries, Inc.</p>
---	---